IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16188 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT PIPAVAV PORT LTD - Petitioner(s)

Versus

STATE OF GUJARAT & 15 - Respondent(s)

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Appearance :

NANAVATI ASSOCIATES for Petitioner(s) : 1,
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1, 4,
NOTICE SERVED BY DS for Respondent(s) : 2,
MR PR NANAVATI for Respondent(s) : 3,
MR BS PATEL for Respondent(s) : 5 - 14.
MR MB PARIKH for Respondent(s) : 15 - 16.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/09/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the

Constitution of India, the petitioner has prayed for an appropriate writ, order or direction directing the respondent authorities more particularly, the respondent No.2-Collector, Amreli to allot land admeasuring 30-Acres of survey No.109 of village Rampara-II, Taluka Rajula, District Amreli. It is also further prayed to issue an appropriate writ, order or direction restraining the respondent No.2-Collector, Amreli from allotting or in any manner transferring or alienating land admeasuring 30-Acres of survey No.109, village Rampara-II, Taluka Rajula, District Amreli to any other person/s save and except the petitioner company.

2. It is the contention on behalf of the petitioner that the Gujarat Maritime Board was constituted by the Government of Gujarat under the provisions of the Gujarat Maritime Board Act, 1981 and the said Board has been vested with the power to develop, manage, administer and control intermediate and minor ports in the State of Gujarat. It is also further averred in the petition that somewhere in the year, 1985 the Gujarat Maritime Board decided to develop an

intermediate port at Pipavav and therefore, sent a proposal to the State Government for acquiring private lands and allot Government waste land for development of Pipavav port in village Rampara-II, Taluka Rajula of District Amreli and in turn, the Government of Gujarat after considering the said proposal acquired the said land and allotted 362 Hectares of land to the Gujarat Maritime Board for the purpose of development of Pipavav port and for the development of project Pipavav port, the Gujarat Maritime Board entered into memorandum of understanding on 7.2.1992 which was converted into an agreement on 23.6.1992, and the petitioner company was incorporated as joint sector company. It is the case on behalf of the petitioner that in all 423 Hectors of land came to be alloted to the petitioner under possession agreement dated 12.8.1992 for the purpose of providing various services enumerated under Section 32 of the Gujarat Maritime Board Act. It is the case on behalf of the petitioner that initially Gujarat Maritime Board had sent proposal of acquiring 374 Hectors of land, however, the Government of Gujarat had alloted 362 Hectors of land

out of the said 374 hectors of land leaving 12 Hectors (30 Acres) of land right in the centre of the entire plot land in view of on-going dispute between the original allottee and the Government. It is the contention of the petitioner that the said plot of land admeasuring 30-Acres comprising of Survey No.109 is critical for the entire project and Gujarat Maritime Board and the petitioner are requesting the State Government to allot the said land.

3. It is the contention on behalf of the petitioner that the said 30-Acres of land comprising of Survey No.109 was originally alloted to one Valabhai Jivabhai and his two sons namely Mayabhai Valabhai Khasia and Khodabhai Valabhai Khasia on 15.3.1982 by fixing price to be paid in five installments and the said land was ultimately cancelled for want of payment of price by order of the Collector dated 3.1.1985. On 8.1.1985, the land was advertised for allotment which did not fructify in allotment and therefore, another public notice for allotment was made on 1st July, 1990. In the meanwhile, surrounding land was acquired by the State Government as stated

hereinabove and the land was alloted to the Gujarat Maritime Board for the purpose of developing the Pipavav port petitioner company. It is the contention of the petitioner that though the proposal for acquiring the said land was made way back in 1985, the Gujarat Maritime Board and the petitioner company made several representations to the Collector, Amreli and the State Government for allotment of said 30-Acres of land, more particularly, since the said land was declared as surplus land and was not alloted to any third party. It is the contention on behalf of the petitioner that as the petitioner was alloted the land adjacent aforesaid 30-Acres of land, out of land bearing Survey No.109, the said land should be alloted to the petitioner. It is the contention of the petitioner that the original allottee lost his claim upto this Court and even the original allottee preferred writ petition being Special Civil Application No.3762/98 praying for allotment of said 30-Acres of land, however, the learned Single Judge dismissed the said Special Civil Application and therefore, it is the case of the petitioner company that considering the replies filed by the State

Government that the petitioner company is in need of the aforesaid 30-Acres of land, the said Special Civil Application was dismissed. It is the case on behalf of the petitioner that the Collector, Amreli is now trying to allot the aforesaid land to the third party for agricultural purpose though the Mamlatdar has recommended the allotment of the land to the petitioner company, and therefore, the action of the collector in trying to allot the land to the other persons for agricultural purpose is illegal and therefore, the petitioner has preferred the present Special Civil Application for the aforesaid reliefs.

4. Shri Keyur D.Gandhi, learned advocate appearing on behalf of the petitioner has vehemently submitted that the land in question i.e. Land admeasuring 30-Acres comprising of Survey No.109 is required to be alloted to the petitioner company as they are in need of said land for their project and it is in the middle of their project and the port. Relying upon the order passed by the learned Single Judge of this Court passed in Special Civil Application No.3762/98 and the stand taken by the Government in the

aforesaid Special Civil Application, it is submitted that the land in question is required to be alloted to the petitioner company only and the Collector, Amreli cannot allot the land to other person/s for agricultural purpose. Shri Gandhi, learned advocate for the petitioner company has also relied upon Letter/Recommendation made by the Mamlatdar allotting the land in question in favour of the petitioner company and has submitted that in view of the recommendations, the Collector, Amreli cannot and should not allot the land to other persons for agricultural purpose except the petitioner company and therefore, it is requested to allow the present Special Civil Application.

5. Respondent Nos.5 to 16 are the persons who have submitted the application for allotment of the land for agricultural purpose pursuant to the public notice issued by the Mamlatdar, Rajula dated 25.7.2005 inviting applications for allotment of the land as per the priority mentioned in the said notice i.e. Allotment of surplus land acquired by the State Government under the provisions of the Gujarat

Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as 'the Act' for short and brevity), as surplus land, is required to be disposed of and/or alloted as per priority mentioned in Section 29 of the Act 1960 only and to the persons and/or society in order to priority as mentioned in Section 29 of the Act and as per the said Section land as per the priority as mentioned in Section 29, land in question is first required to be alloted in favour of co-operative farming society, then, agricultural labourers and landless persons and then small holders. It is submitted that agricultural labourers and landless persons are in fact required to be alloted the said land in question and therefore, it is requested to dismiss the present Special Civil Application.

6. Shri M.R.Mengdey, learned AGP appearing on behalf of the respondent-State Authority while supporting the action of the Collector, Amreli and Mamlatdar, Rajula in inviting the applications for allotment of the land in question and action in trying to allot the lands in question to the

agricultural labourers and landless persons has submitted that as the land in question is acquired as surplus land under the provisions of the Act of 1960, the same is required to be alloted and disposed of as per the priority as mentioned in Section 29 of the Act only and therefore, when the Mamlatdar, Rajula has invited applications from aforesaid persons who are required to be alloted the land as per the priority mentioned in Section 29 of the Act, it cannot be said that there is any illegality committed by the Mamlatdar, Rajula and Collector, Amreli. It is submitted that in fact action of the said authorities is in consonance with Section 29 of the Act. It is also further submitted that earlier also efforts were made inviting application to dispose of and/or allot the land but at that time there were no sufficient applications received, however, at present, sufficient number of applications have been received by the authority from the persons who are required to be allotted the land as per the priority mentioned in Section 29 of the Act. It is submitted that earlier when efforts were made by the respondent-Authorities to dispose of the land under Section 29 of the Act,

the petitioner has never challenged the same and therefore, it is not open for the petitioner now to challenge the same. It is also submitted that even in the order passed by the learned Single Judge of this Court dated 5.10.98 passed in Special Civil Application No.3762/98 upon which reliance has been placed by the petitioner, Shri Mengdey, learned AGP has submitted that the said Special Civil Application was filed by the original allottees and in the said Special Civil Application this Court has not stated anything with regard to the allotment of the land in favour of the petitioner and/or to consider the case of the petitioner for allotment of the land in question. Therefore, it is requested to dismiss the present Special Civil Application.

7. Heard learned advocates appearing on behalf of the respective parties.

8. It is not in dispute and even it is very much clear from the notice inviting applications for allotment of the land in question dated 25.7.2005 issued by the Mamlatdar, Rajula that the same is for

allotment of the excess surplus land acquired under the provisions of the Act, 1960. When the land is acquired by the State Government as surplus land under the provisions of the Act, the said land is required to be allotted only as per Section-29 of the aforesaid Act and it is required to be allotted to the persons and/or society in the order of priority as mentioned in Section – 29 of the Act. Section-29 of the Gujarat Agricultural Lands Ceiling Act, 1960 reads as under :

> “Section 29 (1): [subject to the provisions of sub-section (1 A), land other than grazing land}, which bests in the State Government under Section 21 or 26 shall be allotted in accordance with the rules made in that behalf under this Act on payment of occupancy price payable there for in accordance with such rules in the following order of priority :-
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(ii) cooperative farming society, where it is-

(a) a cooperative joint farming society, the members of which are agricultural labourers, landless persons or small holders or a combination of such persons;

(b) a cooperative farming society, the members of which are agricultural labourers, landless person or small holders or a combination of such persons;

[(iii) agricultural labourers and landless persons :

(iv) small holders]:

Provided that the extent of land to be allotted to a cooperative farming society referred to in clause (ii) together with the land held as owner or tenant individually by the members thereof shall not exceed on area equal to the ceiling area multiplied by the number of members thereof:

provided further that the State Government may, by notification in the Official Gazette, give, in relation to such local areas as it may specify, such priority in the above orders as it thinks fit to any class of persons who, by reason of the acquisition of their land for any development project approved for the purpose by the State Government, have been displaced, and required to be resettled.

[(1A) (a) Where there are two or more cooperative farming societies falling under sub-clause (a) or (b) of clause (ii) of sub-section (1) preference shall be given in the following order, namely -

(i) a cooperative society each of the members of which belongs to a Scheduled Tribe;

(ii) a cooperative society, the membership of which is held partly by persons belonging to a Scheduled Tribe and partly by persons belonging to a Scheduled Caste;

(iii) a cooperative society each of the members of which belongs to a Scheduled Caste;

(iv) (a) a cooperative society, the membership of which is not solely held by persons belonging to a Scheduled Tribe or Scheduled Caste;

(b) in the order of priority in the case of persons falling under [clauses (ii) and (iv) of sub-section (1), a person belonging to a Scheduled Tribe shall have precedence over other persons and a person belonging to a Scheduled Caste shall have precedence over persons other than those belonging to a Scheduled Tribe.

(1B) The amount of occupancy price in respect of any land under sub-section 91), shall be equal to the amount of compensation determined in respect of such land under Section 23.]

Where land which vests in the Stat Government under Section 21 or 26 was used by the holder before such vesting, as grazing or growing grass or is grazing land, the State government may dispose it of in such manner as it thinks fit.

An order of allotment of land under sub-section (1) or (2) if made by a Revenue Officer shall be subject to an appeal or revision as provided in Chapter XIII of the Bombay Land Revenue Code, 1879 as in force in the area within the jurisdiction of such officer and nothing in Chapter VI of this Act shall apply to such order.

[Explanation.-For the purposes of this Act- “Schedule Caste” means such caste, race or tribe or part of or group within such caste, race or tribe as is deemed to be a Scheduled Caste in relation to the State of Gujarat under Articles 341 of the Constitution of India;

> “Scheduled Tribe” means such tribe or tribal community or part of or group within such tribe or tribal community as is deemed to be a Scheduled Tribe in relation to the State of Gujarat under article 342 of the Constitution of India.]”

9. There is purpose for enacting Section-29 of the Act also. If we consider the object of enacting the Agriculture Land Ceiling Act, then the said Act imposes restrictions upon holding agricultural land in excess of certain limits and the said Act is enacted in the public interest to make uniform provisions for the whole of the State of Gujarat in respect of restrictions upon holding agricultural land in excess of certain limits and to secure distribution of agricultural lands as best to subserve the common good to provide acquisition of surplus excess land for the allotment thereof to persons who are in need of lands for agricultural (including co-operative farming societies, landless persons, agricultural laborers and small holders. Thus, considering the object of enactment of the

aforesaid act, it is with a view to allot the surplus excess agricultural land to the persons who are in need of agricultural land including co-operative farming societies, landless persons, agricultural labourers and small holders. The land which is acquired as surplus agricultural land under the aforesaid act is required to be allotted in priority as mentioned in Section-29 of the Act only. If we consider the provisions of Section-29 of the Act, it is mandate of the legislature to allot the said land only in the order of priority as mentioned in Section-29 of the Act. It is also stated in Section-29 of the Act that the land other than grazing land which vests in the State Government under Section 21 or 26, the land ***shall be allotted*** in accordance with the Rules on the payment of occupancy price payable there for approval of such rules in order of priority as mentioned in Section-29 . Therefore, the contention of the petitioner that the land in question should be allotted to the petitioner company cannot be accepted as the said relief, if granted, would be against the mandate of the legislature as envisaged under Section-29 of the Act. By virtue of

public notice dated 25.7.2005, the Mamlatdar, Rajula has invited applications from the eligible persons i.e as per priority mentioned in the said public notice which is as per the priority mentioned in Section-29 i.e co-operative farming society, landless persons and agricultural laborers etc. It is also required to be noted that under Section-29 of the Act, even the land is required to be allotted upto a maximum limit as per Gujarat Agricultural Lands Ceiling Act, 1960. The petitioner company is already having more than 374 Hectors of lands, which is obviously more than a ceiling limit under the Gujarat Agricultural Lands Ceiling Act and therefore also, the prayer of the petitioner company to allot the land in question cannot be accepted as the same will be contrary to the provisions of Section-29 of the Act.

10. Reliance placed upon the order passed by the learned Single Judge of this Court dated 5.10.1998 passed in Special Civil Application No.3762 of 1998 is concerned, nowhere in the said order the learned Single Judge of this Court has directed the State

Government to consider the case of the petitioner for allotment of the land in question. It is pertinent to note that it was the petition i.e. SCA No.3762 of 1998 filed by the original allottees and the learned Single Judge reproduced the affidavit-in-reply filed on behalf of the State Government, in which, subsequent events after allotment have been mentioned. On going through the entire order, this Court did not find anything by which it can be said that this Court has directed and / or this Court has considered the rights of the petitioner company for allotment of the land in question in favour of the petitioner company. Therefore, reliance placed upon the said order by the petitioner company is not of any assistance to the petitioner company. It is also required to be noted that earlier after the land came into possession of the Government as surplus land under the provisions of the Gujarat Agricultural Lands Ceiling Act, the procedure for distributing the lands as per Section-29 of the Act was initiated inviting applications but for one or the other reason the same was not materialized and now as come on record, sufficient number of applications have been

received from the eligible applicants who can be allotted the land as per the priority mentioned in Section-29 of the Act and they belong to either agricultural laborers, or landless persons or the small holders. Under the circumstances, the prayer of the petitioner company to allot the land in question i.e the land which came to be acquired by the State Government as surplus lands under the provisions of Gujarat Agricultural Lands Ceiling Act, 1960 cannot be granted and the same is is rejected accordingly.

11. For the reasons stated above, there is no substance in the present special civil application and the same is required to be dismissed and is accordingly dismissed.

12. Rule is discharged. However, there will be no order as to costs.

[M.R.Shah, J.]

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